

IN THE UNITED STATES DISTRICT COURT  
FOR THE SOUTHERN DISTRICT OF TEXAS  
GALVESTON DIVISION

RICHARD ALLEN DEVILLIER, ET AL.	§	
<i>Plaintiffs</i>	§	
	§	
V.	§	Civil Action No. 3:20-CV-00223
	§	
THE STATE OF TEXAS	§	
<i>Defendant</i>	§	

**THE STATE OF TEXAS’S RESPONSE TO PLAINTIFFS’ MOTION  
TO LIFT STAY AND FOR LEAVE TO FILE SECOND AMENDED MASTER  
COMPLAINT AND SUPPLEMENT TO MOTION FOR PARTIAL  
SUMMARY JUDGMENT**

Defendant, the State of Texas (the State), acting by and through the Texas Department of Transportation (TxDOT), files this Response to Plaintiffs’ Motion to Lift Stay and would respectfully show the following:

**I.**

The State has received the Plaintiffs’ Motion to Lift Stay. However, the motion is untimely, as the case is still pending before the Fifth Circuit, and this Court has not yet regained jurisdiction. Once the parties are notified that this court has regained jurisdiction, the State will submit a further response to the Motion for Leave to File Second Amended Master Complaint and Supplement to Motion for Partial Summary Judgment.

**II.**

It is generally understood that a federal district court and a federal court of appeals shall not attempt to assert jurisdiction over a case simultaneously. *Griggs v. Provident Consumer Disc. Co.*, 459 U.S. 56 (1982). This rule has a few exceptions; granting leave to

amend a complaint is not among those exceptions. *See Dayton Indep. School Dist. v. U.S. Minerals Prods.*, 906 F.2d 1059 (5th Cir. 1990). Additionally, a district court may not take any action that would “alter the status of the case as it rests before the Court of Appeals.” *Id.*

The Supreme Court of the United States issued its opinion on April 16, 2024, and ordered that the case be remanded to the United States Court of Appeals for the Fifth Circuit for further proceedings consistent with its opinion. *See* Ex. A. The Fifth Circuit then complied with the requirements of Federal Rule of Civil Procedure 41 on May 21, 2024, by making a certified copy of the judgment and opinion available on its general docket and providing information from the Supreme Court regarding costs. (“Unless the court directs that a formal mandate issue, the mandate consists of a certified copy of the judgment, a copy of the court's opinion, if any, and any direction about costs.” *Id.* However, the Fifth Circuit has not yet taken any other action or remanded the case to the District Court.

Until such time that the Fifth Circuit issues an amended opinion with further direction or otherwise remands the case to the District Court, the only options available to this Court at this time are to “(1) defer considering the motion; (2) deny the motion; or (3) state either that it would grant the motion if the court of appeals remands for that purpose or that the motion raises a substantial issue.” Fed. R. Civ. P. 62.1.

### III.

The State requests that Plaintiffs’ motion be denied or deferred and that further relief be granted to which the State may show itself to be entitled.

Respectfully Submitted,

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Attorney General of Texas

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First Assistant Attorney General

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/s/ John Zuercher  
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COUNSEL FOR DEFENDANT  
THE STATE OF TEXAS

### **CERTIFICATE OF SERVICE**

I certify that on September 3, 2024, this document was filed electronically via the Court's CM/ECF system, causing electronic service upon all counsel of record.

/s/ John Zuercher  
JOHN ZUERCHER

# Exhibit A

# Supreme Court of the United States

No. 22-913

RICHARD DEVILLIER, ET AL.,

Petitioners

v.

TEXAS

ON WRIT OF CERTIORARI to the United States Court of Appeals for the Fifth Circuit.

THIS CAUSE came on to be heard on the transcript of the record from the above court and was argued by counsel.

ON CONSIDERATION WHEREOF, it is ordered and adjudged by this Court that the judgment of the above court is vacated with costs, and the case is remanded to the United States Court of Appeals for the Fifth Circuit for further proceedings consistent with the opinion of this Court.

IT IS FURTHER ORDERED that the petitioners, Richard Devillier, et al., recover from Texas, One Thousand Six Hundred Two Dollars and Fifty Cents (\$1,602.50) for costs herein expended.

April 16, 2024

Printing of joint appendix:	\$1,302.50
Clerk's costs:	<u>\$300.00</u>
Total:	\$1,602.50

